

BOARD OF ZONING APPEALS

Minutes

September 25, 2001

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on September 25, 2001, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: JOHN ROGERS, BICKLEY FOSTER, BRADLEY TIDEMANN, and JAMES RUANE. The following Board members were absent: RANDY PHILLIPS, FLOYD PITTS, and JAMES SKELTON.

The following Planning Department staff members were present: DALE MILLER, Secretary, SCOTT KNEBEL Assistant Secretary, ROSE M. SIMMERING, Recording Secretary,

Also present: DOUG MOSHIER – Assistant City Attorney.

Also present: J. R. COX – Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

RUANE: Let's call this meeting to order and try to make-up for lost time. You have my apologies. The first Item on the Agenda is to approve the meeting minutes for August 28, 2001. I had faxed over to Dale some changes that I request, would someone with a copy of those care to review those?

SIMMERING: Will you have corrections on page 6, page 10, and page 11.

KNEBEL: Let's see at the top of page 6, correcting, "having to have any" a statement by Ruane. On page 10...

RUANE: Let me interrupt, at risk of speaking way too quickly, let me try to bring the rest of the Board up to speed with what comments I have made.

Please turn to page 10 the top line, my comment the context is this is when Christian Ablah was asked to use one particular slide to provide an answer with regard to the hardship and I would like that sentence to read "No, answer it with the use of the same slide staff did." That's that change.

On page 11, the third paragraph, before the word "hardship", I believe that should be spelled "undue".

On page 13, the last line of that first paragraph, should read, "who wishes to speak, be given his opportunity."

On page 14, in the second line of the first full paragraph, "could be in bankruptcy and are, theaters are closing up".

Two paragraphs down from there the third sentence ends in a question. The next sentence should begin with "Otherwise, we will limit the discussion."

On page 17, top paragraph should begin with "To decide on this issue we will have had the benefit of some very good and well thought presentations, and we have obtained answers to a lot of good discussion."

Then after Sharon Dickgrafe's question and the motion my statement is, "All five conditions have to be met. Through our discussion and the applicant's presentation it appears the most pressing issue to consider is whether or not in particular the hardship condition has been met here."

On page 22, first paragraph, should read, "Ok well, Rose, get that pen out."

Then the last item, the next to the last item, I have a question, with regard to our Bylaws was it our final decision to continue it to our next meeting or to the October meeting?

KNEBEL: October.

RUANE: Ok, then that is correct. On the last page, I think that it should reflect that our Agenda called for J.R. Cox to give his report from Central Inspection and then on my motion that was tabled.

RUANE moves ROGERS seconds, that the minutes for August 28, 2001 be approved with those corrections.

FOSTER: Could I have my named spelled right on the first page?

RUANE: Would you please spell Mr. Bickley Fosters name right on the first page.

FOSTER: I know I have been gone for a year and half.

RUANE: In the interest of efficiency should there ever be this many changes in minutes, I would ask that those be copied and provided to the members in advance so that we don't have to go through this long record and can make it simpler and easier for everyone. Do I have a second for that motion?

MOTION carries 4-0.

RUANE: Next Item, Case Number BZA2001-00043.

SCOTT KNEBEL, PLANNING STAFF: Good afternoon, this particular variance request...

AUDIENCE: Is the P.A. system on? I can't hear you.

KNEBEL: I am sorry. I will try and speak up for you. This particular variance request is for a reduction of the front setback for a residential lot, which is located on Alturas, just east of Washington the address is 1113 Alturas. The site is currently developed with the single-family residence. The owner of that residence had a pre-manufactured carport installed at this site. The building contractor did not get a permit for the installation of this carport and a complaint was subsequently filed regarding this carport. In following up on that complaint the Office of Central Inspection determined that the carport encroaches into the front setback by 19'3". Carports are allowed to encroach into the front setback, if they are open by, 8' and so this obviously exceeds that requirement within the Zoning Code and the applicant has requested a variance to reduce the front setback to 5'9" to correspond with the current location of the carport.

I can show you that the area is fully developed with single-family residences so you can see by the aerial and that it has been for a number of years. This is the site plan which you should have a copy of which shows the developments on the site including the house. The carport located entirely in front of the front line of the house in this location here encroaching into the front setback and then existing storage buildings located in the rear yard. Then it also shows the nature of the side yard setbacks along both the north and the south or I am sorry the east and the west property lines, north is in this direction.

This is the picture of the site that shows the pre-manufactured carport looking to the south. It shows that it's located in front of the house. This is looking at it from the west, or looking to the west I should say and then looking to the east. This is looking down the street along Alturas both to the east and to the west just to give you a perspective of how the neighborhood has been developed over the years. And then this is looking directly across the street because it wasn't really included in the other two pictures.

As I had mentioned previously the entire area is developed with single-family residences.

Regarding whether or not the property is unique, we feel that it is not unique. We feel that this particular property is the same as all of the other single-family properties in this neighborhood and other neighborhoods throughout the community. It is a 60-foot wide residential lot. It already has a single car garage to provide for indoor parking of a vehicle. Under the Zoning Code the parking in "SF-5" zoning district is intended to be accommodated in the side and the rear yard. In this particular property, were it to have been developed differently over the years, could provide that parking in either, probably not in the side, given the width of the house but within the rear yard with a driveway that would go to the back with a garage or some sort of covered parking structure in the rear yard.

As far as the impact on adjacent properties, we feel like the carport with it's pre-manufactured design does not match the design, color or materials of the primary residence and detracts from the aesthetic appearance of the neighborhood. We do feel that the applicant does have a hardship as far as needing to have covered parking for medical condition, which they have provided documentation regarding that from their physician. Providing that parking would be quite costly.

As far as the public interest, we feel like that would be adversely affected by allowing this carport does not meet the overall goal of having consistent front setback to provide minimum open space needs along a street frontage.

As far as the spirit and intent of the Code is concerned the "SF-5" zoning district is intended to provide parking either in the side or in the rear setback not in the front setback. Structures are not intended to be constructed in that front setback for the purpose that I stated before of having a uniform front yard along the street frontage for open space needs.

Therefore, staff is recommending that the request be denied. We have listed some conditions which we think the variance should be subject to if the Board does find that the other four items are in effect met and would grant the variance. With that I will answer any questions you might have.

RUANE: Any question from the Board for staff?

FOSTER: Scott, could I see the picture of the building again?

AUDIENCE: Can you turn the P.A. system up? We can't hear you over here at all.

RUANE: Who would be able to turn up the P.A. system?

MILLER: Well, I can turn it up but it is as high as it can go without giving feedback, you all need to speak up and speak into the microphones.

RUANE: Could we split the difference? Could you move closer to us as a way to help solve that problem?

AUDIENCE: I did not hear your question.

RUANE: If you would sit closer to us, maybe you would have a better chance of hearing him and us both.

AUDIENCE: I would like to sit somewhere where I could hear the testimony.

RUANE: Choose your place.

KNEBEL: Is this the picture that you are requesting?

FOSTER: Yes. Scott is it possible to get a car around, what is that the north side? Or is that the east side?

KNEBEL: On the east side of the home, it would be tight it is 9 feet 7 inches and that is not typically what you would like to see. A lot of times I will admit when rear drives do extend to the rear of homes it is a driveway that is located on both property lines and is shared by two properties.

FOSTER: They have an operable single-family garage?

RUANE: Sir, you need to let him answer and when it is your turn, cover all your questions.

KNEBEL: There is a garage door there. I was unable to inspect to determine whether or not the garage itself has been converted to living space or not but it does have a garage door there.

FOSTER: You don't have any record of it being converted to living space or anything that you are aware of?

KNEBEL: Well, I did not check that.

RUANE: Any other questions from the Board? Would there be anyone else to speak in favor of the application? Sir, if you would please step forward to the microphone and introduce yourself and give us your residence.

JOE TILLMAN, APPLICANT, 1113 ALTURAS: We toured the neighborhood about the first and second week of July and got an idea of what was already out there. Because of the fact to begin with my doctor suggested and wrote a prescription for such a size of coverage area to prevent my back injury and knee injury from flaring up again which it has in the past several times.

We contracted a licensed contractor who evidently lied to us and told us that this was portable structure and that he didn't need a permit. His name is Stuart Nelson, from either S & A Construction or as in the name of the carport Superior Steel. It was actually built right on site put together and built right on site for this size and everything. I guess I can just plead ignorance as far as knowing about any setback laws. The reason for that is that there is so many in our neighborhood already that are setting in the same place, they are not identical but they are the same size and the same location. I have talked to them people and only one of them so far out of approximately 30 of them have ever or even knew what I was talking about a variance hearing.

I had to mortgage my home a second time and my pick-up truck that was paid for in order to get this. It took three guys from the construction company a whole day to put it up. The fact of the matter that it was put up on a weekend was his own insistence. I really don't have anything to add to that but I just request that I keep it because I need it for my back and my knee injuries. There is no way of getting a car around on the east side of the residence, there is a gas meter around there that kind of restricts even the passage of a vehicle there. We have in fact increased in the last two years the value of our home some \$12 to \$14,000 dollars with the addition of this carport and several other items. The fence in the rear, the fence in the front, and such like that but, that is about all I have to say about it.

RUANE: Hang on and stay there please. When Scott was providing answers to certain questions, you seemed to have some responses that you wanted to provide.

AUDIENCE: That easement, there is no alley....

TILLMAN: Yes. It is kind of strange I thought but a lot of neighborhoods have it, there is no alley or easement in the rear at all to get to the back. I would be in favor of that, I would love to park around behind for security purposes if nothing else but there are no alleys. I thought that kind of strange but evidently only the older neighborhoods have the alley and easements.

RUANE: Was there another question that you wanted to respond to as well?

TILLMAN: Just the gas meter part.

AUDIENCE: The view on the west is a privacy fence.

TILLMAN: The fact of the matter that it broke up the even lines of the neighborhood as it exist and as it is developed now. That is kind of a strange way to put that because if you look right over here on the west side there is already my neighbors ratty looking 6 foot privacy fence that runs clear to the sidewalk. I don't know whether that is legal or not, I never said anything about it at the time because I liked it. It covered up the nasty mess over there, honestly. I don't want to myself put one up in front because I am in question about the legality of being six foot clear to the sidewalk, however, I have caught to many different stories. It is all in I think terminology, how you put it. I was just told a few minutes ago by Sharon, that Jim Cranford of the Central Inspection tells her that if I called it a porch extension it would be just fine. So, I don't know.

RUANE: Thank you, any other remarks that you would like to make? I believe there will be some questions from the Board.

TILLMAN: No, I think that about covers it.

RUANE: Let's see what questions one might have for you.

FOSTER: Mr. Hamilton, is that a usable single-family garage there?

TILLMAN: Yes, it is. I have my pick-up truck in it. My wife uses it for groceries and such.

AUDIENCE: There is an older car too.

TILLMAN: Yes, my son parks there too.

RUANE: If you are going to speak you are going to have to get on the record. You have that opportunity if you chose.

FOSTER: Thank you that is all I need to know Mr. Hamilton.

RUANE: Any other questions from the Board?

ROGERS: Mr. Tillman, does your neighbors have a drive just on the other side of that privacy fence that goes back?

TILLMAN: Yes, they added one a few years back.

ROGERS: How far back does that drive go?

TILLMAN: I think to the very back of their house. I think.

ROGERS: Your concrete stops right in front of that blue car, is that correct?

TILLMAN: Yes. We have a narrower side. It seems like that whole neighborhood has a wider side on the east than it does on the west. It is just the way the houses were situated.

RUANE: Any other questions for Mr. Hamilton from the bench?

FOSTER: Mr. Chairman, I am a little confused I have got Mr. Hamilton as the owner applicant, and then we are talking to Mr. Tillman?

KNEBEL: The secretary's report is incorrect it should be Tillman not Hamilton.

FOSTER: So, it is Joe Tillman, right?

TILLMAN: Yes.

RUANE: My apologies, I am sorry. You may step down. Anyone else to speak in favor of the application? Did you want to say something? You then need to step to the microphone and provide us your name and your address.

LINDA TILLMAN, 1113 Alturas: We did contract Superior Steel to put this in. We asked them up front about a permit, they said no we did not need one. They suggested that they come out and do it on a Saturday so my husband would be home. I said that would be fine. Nobody said anything about the setback so we had them come in and do it. It does not block the view of anybody's getting in and out. The only thing that does is the neighbor's privacy fence. Like my husband said, it will be a hardship on us if we have to take it down. We were also told the only reason there was some complaint about it was because of who we are.

RUANE: My question to you is, "How are we responsible to resolve your contractors mis-statement that there was no permit needed?"

TILLMAN: We were told according to Kansas State Law is the contractor's responsibility to get the permits.

RUANE: I believe that you are correct, but, how are we responsible?

TILLMAN: We did not even know that we had to have a variance. We did not hear anything about a variance at all until we talked to Central Inspection when they came out with a correction notice. Nobody had ever mentioned a variance, and that we needed to request one.

RUANE: I thought I understood you to say that the contractor had represented that no permits were necessary.

TILLMAN: Yes, he said no permit. But according to the City there is a difference between a permit and a variance.

RUANE: I understand. How are we responsible to resolve the problem that your Contractor misrepresentation to you causes you?

TILLMAN: How are you, suppose to?

RUANE: How are we responsible to?

TILLMAN: I don't know. All I know is that I was lied to by my Contractor and according to State Law he was the one to get the permit.

RUANE: I believe that you are correct.

TILLMAN: If we had known we were to have a permit we would have went through and got it, that was not the problem.

RUANE: Thank you very much. Any questions?

FOSTER: Mrs. Tillman, you have two detached structures in the rear yard, were they there when you built the house?

TILLMAN: No Sir, they were not.

FOSTER: So they were built at some earlier time?

TILLMAN: We had one of them built in 1989 and I believe the other one was built in 1985.

FOSTER: Did you go through the experience of getting a permit at that time?

TILLMAN: Both Contractors got permits. One is a permit for the larger storage building and the other one they said that we needed a placement permit and both Contractors got that.

FOSTER: Have we established Mr. Chairman I don't know that this is a State Law for getting a permit? I don't know that it maybe. Has staff have any experience with that?

MILLER: Who is responsible for getting the permit?

FOSTER: Yes, she mentioned something about it being a State Law. Are you aware of that?

DOUG MOSHIER, ASSISTANT CITY ATTORNEY: That is not correct, it is a matter of City Code. I think the Chairman was just acknowledging that there is a legal requirement that you get a permit. It is not a matter of State Law. It is a matter of local ordinance.

FOSTER: That is all that I wanted to know.

RUANE: Thank you, and for the record, distinguished Counsel for the City has provided that legal opinion. Any other questions? Thank you. Anyone else to speak in favor? Jump on up there.

SHARON EVANS, 1126 Alturas: We have lived there since 1978. To speak of the carport first, the first time I saw it I thought, I wish I could afford one like that. It is the nicest carport I have ever seen put up. The rest of them in our neighborhood are what I called like little lean-to. I was in shock that these people were in offense of it. Their property is nice, all of us that take care of our property in the neighborhood are about the same, they are all nice we do have some junk but those are the ones that are working on it.

Joe and Linda called Central Inspection and were passed on to another phone call, another place to go, another this, another that, it is not my job, that is not us, what does a person do when they are building something and they get this kind of stuff from the City? I worked for the City for 17 years. I know how it goes. How is a common layperson like us supposed to know when they are doing something wrong? When there is people on the phone saying no this is ok, next week they can call and it is not ok, what are we suppose to do? There is nothing ugly about this carport. I don't know about your free lines but I don't think it makes my property look any less in value, it upped the value of their home.

Shame on these people because we are all good neighbors. I have done things for everyone of them, and I don't understand this. I find it embarrassing and humiliating because we had a neighborhood that took care of each other before Mr. Manning here seems to think ...

RUANE: Let's not make any personal comments. Let's just talk about the zoning variance.

EVANS: I don't know about your zones, and I don't know about your codes but the carport is not ugly and it does not take away from anybody's property.

RUANE: Thank you are there any questions for this young lady? Thank you very much for you comments. Anyone else to speak in favor of the application? Alright then we will hear from those that are opposed. Do each of you plan to speak? Each of you are welcome to speak, I am just trying to gage how much time to take and ask that...

AUDIENCE: I am going to speak for those folks on the front row.

RUANE: Alright.

WILLIAM E. SMITH, 1115 E. 31st Street South: They are blaming people in our neighborhood for complaining about a carport and they are talking to the wrong party. The restrictive covenants are very specific and they obviously intentionally or unintentionally violated those covenants. That is what they should be aware of before they build any structure. We all have to live within the confines of those restrictive covenants and we all try to. As far as he said he had canvassed the area and looked at carports, there are probably two in the entire area. If we allow this to happen there can be 200, everybody could put one up, then the next thing they can close them in. Gentlemen we cannot tolerate that, it is not acceptable. We are all opposed to it and we believe that you should deny this. We are not mad at those people we have no ax to grind with them and we are not singling out anybody but if you are aware of the covenants that is the issue. That is all that I have to say.

RUANE: Thank you, Sir. What question does the Board have for the gentlemen?

FOSTER: Mr. Smith, as you probably know the City does not enforce deed restrictions. Are you aware of that?

SMITH: Am I aware of what?

FOSTER: That the City does not enforce restrictive covenants?

SMITH: I am aware of that. But that is an issue that all landowners that reside in areas should be aware of whether they are going to be enforced or not. Now we don't have an architectural association where they would submit their plans like a lot of areas have. But, we do have specific covenants that we need to live by and under.

FOSTER: Thank you, Mr. Smith.

RUANE: Any other questions? Anyone else to speak on this matter?

JOSEPH F. FAIR, 1120 ALTURAS: Which would be the property to the north and one house to the east, next door to where this picture was taken.

RUANE: On which side? The side towards the blue car or the other side?

FAIR: This side to the east. I have no ax to grind with the Tillman's they have been very good neighbors, they have I agree taken very good care of their property they have increased the value of it, no question about that. They keep their place up, no question about that, the entire issue here is the City Ordinances were either ignored or they were unaware of them. This isn't somebody measuring wrong and missing a foot on the tape and getting a foot into the setback zone this is completely ignoring the City Code and permit process so I think that is the entire issue here.

RUANE: What questions for Mr. Fair?

FOSTER: May I ask, you are aware of your restrictive covenants right?

FAIR: I am now.

FOSTER: Would Mr. Tillman, did you let him know this sometime earlier when this was being built or anything like that?

FAIR: I became aware that this was being built when it was being built and I went over to mow the yard on a Saturday morning and the poles were up and the process was on. So as far as anybody being consulted I don't know if that would be a requirement for somebody to do something on their own property, they can do what they want to do. If there was any question they certainly were free to communicate with the people in the neighborhood.

FOSTER: But nothing was said to them about this at that early time right?

FAIR: Nothing was said to me, I was unaware that this thing was going up until it was half up.

FOSTER: I was just curious.

RUANE: Thank you. I have one question is there anyone here associated with or representing the Contractor who built this structure.

FAIR: May I say one more thing. This is hearsay it is nothing for sure. I was under the impression that the building permit and all of that was on the property owner to ensure that the building permits were in hand. I believe that is on the consumer in the State of Kansas. Kansas is pretty kind to Contractors, is my understanding, mechanic's lean laws and things like that don't apply here but similar situation.

RUANE: If there is no more comments let's bring it up here for discussion, motion, and action in whatever order you would prefer.

FOSTER: Are we still under the rule that you have a ruling of 4 votes is that what we are? They haven't changed the Bylaws or anything? I have been gone a year and a half that is why I am asking the question. So it is still 4 votes to make a decision one way or the other, correct?

MILLER: Yes, it takes 4 votes to have a valid decision.

FOSTER: Thank you. I have a question for staff, Dale or Scott again has the policy changed in the last year and a half? I know when I was on for four and a half years we had quite a number of cases and this is not new at all, we have had other cases previously where people have had the same thing happen where somebody didn't get a permit and that was the responsibility of the builder. Have you had any cases in the past year and a half on this that has changed any policy, because the ones in the past have been turned down, all of them to my knowledge. Any precedence set in the last year and a half?

KNEBEL: I think the only one that has occurred in the time that you were not on the Board dealt with a carport that was in the side yard setback in an instance where the two structures were separated significantly and it was granted a reduction I think to a 2 foot side yard setback.

FOSTER: I read the minutes, it was early this spring, I think I read those minutes. Is this new that it allows a carport in the first 8 feet or has that always been, have I forgotten?

KNEBEL: It is not anything that is new. You can have an open unenclosed carport of porch or other type of structure within the first 8 feet of the front setback.

FOSTER: As long as it is an open type?

KNEBEL: Right, it has to be open and unenclosed.

RUANE: What other comments, discussion or motions, do we have from the table?

ROGERS: Mr. Chairmen, I feel for Mr. Tillman and my opinion with his medical conditions, however, I am prepared to make a motion that we deny this request.

RUANE: Read further on this page.

ROGERS moves TIDEMANN seconds, that the Board accept the findings of fact as set forth in the Secretary's Report and that all five conditions set out in the section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found not to exist and that the BZA2001-00043 variance be denied.

KNEBEL: We might make one point the Secretary's Report does find that one of the five conditions was found to exist but four have found not to exist. He did mention that all five conditions were found not to exist.

ROGERS: Let me correct that. That is what I meant by my previous statement regarding Mr. Tillman's medical condition. I agree with the Board with that respect that he does have a condition however I feel like under the circumstances that does not sway my decision or to change my vote. I still feel that all five conditions do not exist, is that acceptable?

RUANE: Just stick with the motion.

TIDEMANN: A friendly amendment accepted.

ROGERS moves TIDEMANN seconds, that the Board accept the findings of fact as set forth in the Secretary's Report and that four conditions set out in the section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found not to exist

and that the BZA2001-00043 variance be denied.

RUANE: Did you get that? A friendly amendment accepted by and seconded. Matters appropriate for discussion? The question can be called.

FOSTER: Mr. Chairmen I think for the minutes we ought to note that we have received a letter. I believe that everybody has it there I don't know whether the audience knows it but we do have a letter from the District Advisory Board is the applicant aware of this? Dale, do you know whether they are aware of the District Advisory Board's actions?

KNEBEL: I don't believe so I believe they just sent it to your attention.

FOSTER: I think we ought to note for the record that the District Advisory Board III considered this matter on September 4. It is kind of amazing they considered it on September 4, 2002 that is quite a feat I can tell you that. We assume that it was 2001 and they discussed the matter and felt strongly about this issue and wished to convey their opposition to this request for a zoning variance. We also have letters from Lawrence and Kathleen Manny pointing out the restrictive covenants and their concern about the carport. We also have a letter from Stan Unrein in which he recommends that it be denied. We also have a letter from I believe from Hedy Unrein, in which she would recommend that it be denied. I think we ought to have to for a record for the minutes Mr. Chairmen.

RUANE: So the action requested is to incorporate those into the minutes of this meeting?

FOSTER: Yes.

RUANE: I think that is a wise choice.

FOSTER moves RUANE seconds to incorporate the memo from District Advisory Board III and letters from the concerned citizens received by the Planning Department into the BZA minutes.

MOTION carries 4-0.

RUANE: Now turning to the question is there further discussion? Are we ready to call the question? This will be Mr. Rogers, motion to deny. Motion has been made to call the question. Therefore we shall vote all those in favor of or in support of the motion to Deny the variance as made by Mr. Rogers please indicated by saying "Aye". Are there any opposed? Hearing none I ask the Secretary to note the vote.

MOTION carries 4-0.

RUANE: Would the Secretary make a note of the outcome of this and provide it to the applicants and my suggestion is that you provide that information to your contractor.

FOSTER: Are they aware of their Appeal process? Do you normally let them know that process? It is 30 days after this action.

MILLER: We typically send a follow-up letter so that they know what the official action of the Board is and have it in writing.

RUANE: Right, so we don't make that record and I don't make the statements now?

MILLER: We are going to do that as follow-up to the applicant and to the concerned parties.

RUANE: I would much rather you do it I think it is a much cleaner means of communication, you can say it better than I can. Thank you all for your input and your concern. I very much appreciate the polite manner in which you have handled yourselves today. Again, I am sorry I was late. Turning to the next Item on the Agenda it is number three.

TAPE CHANGE:

J. R. COX – Commercial Plan Review/Commercial Zoning -- Office of Central Inspection: I have two BZA's to report on today the first is BZA2000-02 this was a sign variance to increase the height as well as the area, the size of a pole sign it was at 11134 E. Kellogg and this BZA is in compliance. The second and last BZA2000-19 this was a rear yard setback variance this was at 301 N. Crestway and that BZA is in compliance. That is all I have and if you have any questions I will try and answer them if not that concludes my report.

RUANE: Thank you J.R. before we adjourn I have an off Agenda Item that I would like to bring up. I think this has to do directly with the Bylaws draft that we are coming up with. My sensitivities were greatly raised in the matter of the Dick Sporting Goods sign that we talked about lately. As to how unfair it is to staff if we receive communication directly from applicants that staff doesn't know anything about. Furthermore, if some of us on the Board receive certain information and other of us on the Board receive other information and I would really encourage you to take careful stock of that and outline carefully for us what our appropriate course of action is to follow on that.

I will tell you that particular matter is going to come back before us. I have been contacted. I said that from and after the point that I have become the Chair of this Board, that I found it inappropriate for me to have any communication exparte at all with regard to any aspect of this subject. As well, I received another call from Tim Austin and I dressed him down with regard to Kim Edgington providing us with quite a bit of detail that staff did not know anything about and elicited his promise that would not happen again.

But I think that while the Bylaws are to guide our course of conduct, innocent mistakes like that will be made unless we establish some rules of protocol for the applicants and in particular for their professional consultants to follow. So that is

the end to my soap box but I think that we are really onto something in terms for the need for us to tighten up our Bylaws because we are a quasi-judicial body. There is a great need in City Hall for standardization of Bylaws etc. but that shoe does not quite fit with a quasi-judicial body such as we are. Doug, if you can would you put a little horsepower on this as well?

MOSHIER: Sure, I think that is absolutely appropriate comments. I have not talked to Sharon too much but she did warn me that Bylaws was something that might be discussed a little bit. But I will report what she said.

RUANE: The template just doesn't quite fit a quasi-judicial body such as us. Believe me I don't want to make a mountain out of a mole hill but I found it so easy to say "Hey, I am glad we are still friends after last month's meeting but, I am not talking to you about this matter, period." I think it makes it far more, the processes here has much greater integrity if we will follow some simple rules like that. That is all I have unless there is any other discussion with regard to that topic.

MILLER: I don't want to discuss the merits of the case but they have re-filed. So at your next meeting, you are going to be asked one thing first, it will be sequential but, you are going to be asked whether or not you think the re-filing meets the criteria for hearing a similar case without the year lapsing of passing. So next time you will be asked number one is to look at the merits of their request and decide whether or not you think it is appropriate to re-hear it. Then depending on what you do there then if you decide it is then they have asked us to have the staff report prepared and ready to go and for you to reconsider it at that meeting. So unless that it is not your pleasure at that meeting that is what we are intending to do at this point. But, I did want to let you know that they have re-filed and that will be considered and so we will probably need as many Board members here as we can get because of the nature of the issue.

RUANE: I think so and I think that particular wrinkle on this is what makes any exparte communication by any of the members of this Board before we convene for our meeting. It is especially dangerous to taint the whole process and so that it is the real reason for my sermon. Do you personally or does staff have a feeling of what size or what the marginal difference between one application and the next is in order to satisfy the come back of a month later?

MILLER: What we are planning to do is put a memo together and give you our opinion as to whether you should hear it or not.

RUANE: Is the differential the logical key?

MILLER: It is open to interpretation the way that it is worded. I mean I can't remember whether it is material difference or substantial difference. But it is one of those judgment call type things and it is really up to the Board to decide whether they have changed it enough that it is not the same case.

RUANE: Well if we keep this up and I lose one friend a meeting I am not going to have any friends left by the end of the year. I think on that comment we will adjourn.

MEETING ADJOURNED 2:30 p.m.